

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL TAYLOR, *et al.*,

Plaintiffs,

v.

COUNTRYWIDE HOME LOANS,
et al.,

Defendants.

Case No. 08-13258

Stephen J. Murphy, III
United States District Judge

Michael Hluchaniuk
United States Magistrate Judge

**ORDER GRANTING PLAINTIFFS' MOTION
FOR LEAVE TO AMEND COMPLAINT (Dkt. 6)
AND PLAINTIFFS' MOTION TO STRIKE (Dkt. 16)**

Plaintiffs filed a complaint against defendants on July 29, 2008. (Dkt. 1). In lieu of a responsive pleading, defendants filed a motion to dismiss on August 18, 2008. (Dkt. 5).¹ Plaintiffs then filed a motion for leave to file an amended complaint on August 21, 2008. (Dkt. 6). Defendants filed a response to plaintiffs' motion for leave to amend, pointing out, among other things, that plaintiffs failed to attach a new proposed amended complaint in accordance with Local Rule 15.1. (Dkt. 7). Plaintiffs filed a proposed amended complaint on September 15, 2008.

¹ Via a separate Report and Recommendation, the undersigned has recommended to the District Court that defendants' motion to dismiss the initial complaint be dismissed as moot in light of the conclusions reached herein.

(Dkt. 13). On September 22, 2008, defendants filed their opposition to plaintiffs' motion for leave to amend. (Dkt. 15). On September 23, 2008, plaintiffs filed a motion to strike their exhibits from the proposed amended complaint because certain personal information was not redacted. (Dkt. 16).

While defendants object to plaintiffs' proposed amended complaint on the grounds that it fails to state a claim and permitting amendment would be futile, plaintiffs may amend their complaint as of right and without leave of the Court at this stage of the proceedings. Where "no defendant has yet filed a responsive pleading to the original complaint," a plaintiff is "entitled to amend his complaint as of right pursuant to Fed.R.Civ.P. 15(a)." *Reynolds-Bey v. Harris-Spicer*, 2007 WL 1063304, *1 (W.D. Mich. 2007); *see also, Sousa v. Ferguson*, 2005 WL 1796131 (W.D. Mich. 2005) (An "amendment as of right under Fed.R.Civ.P. 15(a) can be forestalled only by the service of a 'responsive pleading,'" and "a motion to dismiss or for summary judgment is not considered to be a 'responsive pleading' for the purposes of Rule 15(a)."). Thus, plaintiffs are **GRANTED** leave to file their amended complaint.

In conjunction with their motion for leave to amend, plaintiffs filed exhibits attached to their proposed amended complaint on which social security numbers and account numbers were not properly redacted in accordance with local rules.

(Dkt. 13). Thus, plaintiffs filed a motion to strike these exhibits and offered redacted exhibits to be “substituted” in place of the exhibits attached to their proposed amended complaint. (Dkt. 16). The Court **GRANTS** plaintiffs’ motion to strike, and directs the Clerk of the Court to remove the images of certain exhibits attached to Docket Entry 9 (pages 19-37) and Docket Entry 13 (pages 19-41) . The Court directs plaintiffs to re-file their amended complaint, with the redacted exhibits attached, with the Clerk of the Court within 14 days of entry of this Order.

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not thereafter assign as error any defect in this Order to which timely objection was not made.

Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Date: September 30, 2008

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Alicia B. Chandler and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Daniel Taylor, 35639 Rainbow Drive, Sterling Heights, MI 48312 and Diane Taylor, 35639 Rainbow Drive, Sterling Heights, MI 48312.

s/James P. Peltier
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